

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EMILY HOUTZ,	:	
INDIVIDUALLY AND ON BEHALF OF	:	
ALL OTHERS SIMILARLY SITUATED,	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 5:23-cv-00844-JMG
	:	
PAXOS RESTAURANTS	:	
doing business as	:	
MELT RESTAURANT,	:	
Defendant.	:	

ORDER

AND NOW, this 26th day of February, 2024, upon consideration of Plaintiff's Fair Labor Standards Act ("FLSA") Collective Action allegation in her Amended Complaint (ECF No. 6, at 12), the original Scheduling Order setting a November 23, 2023 date for motions to conditionally certify the collective action (ECF No. 24, at 1), Plaintiff's Motion to Conditionally Certify FLSA Collective Action, which was filed a day late (ECF No. 25), the Court's order denying without prejudice Plaintiff's motion to conditionally certify the collective action for lack of supporting evidence beyond the Amended Complaint (ECF No. 27), the Amended Scheduling Order extending Plaintiff's deadline to motion for conditional certification of the collective action to January 19, 2024, Plaintiff's January 11, 2024 communication stating that she "still plan[s] on filing the motion scheduled for January 19," (ECF No. 28), Plaintiff's failure to refile her motion to conditionally certify the collective action as of the date of this Order, Plaintiff's Response to the Court's Order to Show Cause (ECF No. 34), Defendant's Response to the Court Order to Show Cause (ECF No. 35), Plaintiff's Motion to Compel Discovery Responses and Depositions (ECF No. 32), Plaintiff's Amended Motion to Compel

Discovery Responses and Depositions (ECF No. 33), and any exhibits attached thereto, and for the reasons provided in the accompanying Memorandum Opinion,

IT IS HEREBY ORDERED that Plaintiff's Fair Labor Standards Act ("FLSA") collective action allegations in Count I of the Amended Complaint are **DISMISSED without prejudice** and **STRICKEN** from the pleadings.

- a. Count I may only proceed on an individual basis.
- b. The Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims (Counts II and III), and they are **DISMISSED without prejudice** so they may be brought in state court.
- c. Plaintiff is **GRANTED LEAVE** shall file its second amended complaint in accordance with this order as well as the Court's October 17, 2023 order (ECF No. 21) (dismissing Count V) no later than **Wednesday, March 27, 2024**.
- d. The Court will issue a second amended scheduling order as soon as practicable reflecting the remaining structure of this case.

IT IS FURTHER ORDERED that Plaintiff's motions to compel (ECF Nos. 32–33) are **DENIED as moot**.

BY THE COURT:

/s/ John M. Gallagher
JOHN M. GALLAGHER
United States District Court Judge